

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TNT ROAD COMPANY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil No. 03-37-B-K
STERLING TRUCK CORPORATION,)	
)	
Defendant.)	
_____)	
)	
STERLING TRUCK CORPORATION,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
LEAR CORPORATION,)	
)	
Third-Party Defendant.)	

MEMORANDUM OF DECISION¹

This Memorandum of Decision addresses third-party defendant Lear Corporation's motion for sanctions (Docket No. 48) against third-party plaintiff Sterling Truck Corporation for alleged spoliation of evidence. Lear requests that the court dismiss Sterling's third-party action, exclude Sterling's expert, or instruct the jury about inferences that might be drawn from a party's spoliation of evidence. Due to the particular circumstances of this case, I decline to impose any of these sanctions.

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge Margaret J. Kravchuk conduct all proceedings in this case, including trial, and to order entry of judgment.

Background

This case arises out of a fire that occurred on April 22, 2000, and burned a 1999 Freightliner vehicle owned by the plaintiff, TNT Road Company, Inc. On the day of the fire an insurance representative and a fire cause and origin expert viewed the vehicle. One month later, the plaintiff's expert, James Adams, also viewed the vehicle and inspected the debris. Based on his investigation, Adams concluded that the fire originated in the vehicle's ignition switch. Within two weeks, plaintiff informed defendant Sterling Truck Corporation of the fire and of its opinion as to the fire's origin. Sterling made arrangements to inspect the vehicle on July 12, 2000. Meanwhile, TNT was becoming anxious to free up garage space occupied by the burned-out vehicle, a tractor trailer, and to salvage parts to use in building another vehicle. Following the July 12 inspection by Sterling, Sterling informed TNT that it could do what it wished with the burned-out truck and TNT made arrangements to salvage parts from it. In September of 2000, TNT's insurers contacted Sterling to request a full reimbursement of insurance proceeds paid to TNT. Eventually, someone at Sterling had the idea that Lear ought to be notified of the fire because Lear had supplied the ignition switch that allegedly caused the fire. That notification was transmitted on January 22, 2001. Sterling's lack of diligence was then aped by Lear, which waited almost eight months before requesting an inspection of the vehicle, which by that time no longer existed. There was, however, a narrow window of opportunity for Lear to inspect the vehicle. The record suggests that the remains of the burned-out truck were not disposed of until sometime in February or March of 2001. The truck's ignition switch was preserved, however, and Lear and its experts have been able to inspect it. Additionally, numerous photographs were taken and preserved of the truck remains and various relevant components.

Discussion

According to Lear, Sterling's failure to provide timely notification of Lear's interest in the fire deprived Lear of a meaningful opportunity to have its own experts inspect the wreckage to evaluate the cause and origin of the fire. As a result, says Lear, it was unduly prejudiced and should be absolved of all liability to Sterling on Sterling's third-party action. This would, in effect, dismiss Lear from the case because TNT's complaint does not include a direct claim against Lear. Alternatively, Lear suggests that Sterling's designated cause and origin expert be precluded from testifying at trial. As a final resort, Lear suggests that it might be content if the court would instruct the jury that it is free to infer from Sterling's failure to preserve the burned-out vehicle that Sterling has something to hide, *i.e.*, that a thorough inspection of the wreckage would have pointed to something other than Lear's ignition switch as the cause of the fire.

Complicating matters is the fact that Sterling has designated the plaintiff's expert, Mr. Adams, as its own expert when it comes to supporting its third-party action against Lear. In other words, Sterling apparently believes that a verdict in favor of TNT would necessarily result in a verdict in favor of Sterling's third-party claim, because TNT's only evidence of causation or product defect points to Lear's switch. However, one theory of the case is that the switch casing may have been cracked, letting moisture into the switch and providing a means for sparking the fire. Because any crack might have been introduced by Sterling during its installation of the switch into the Freightliner vehicle, and not necessarily by Lear during its switch manufacturing process, one cannot assume that Lear automatically bears 100 percent liability even if the switch were the origin of the fire.

Ultimately, I am not persuaded that these circumstances justify a dismissal of Sterling's third-party action based on a spoliation sanction. I recognized that Sterling was less than vigilant

in recognizing the need to notify Lear of the fire, but it also appears that Lear was less than vigilant when it came to preserving its interest in inspecting the vehicle. Moreover, the vehicle was TNT property; Sterling did not have any authority to prevent TNT from making use of it. Absent such authority, I fail to see how Sterling could be considered a spoliator. Nor do I consider the exclusion of Mr. Adams's testimony to be practicable. Mr. Adams is TNT's retained expert. Excluding his testimony would serve as a sanction against the plaintiff, who preserved the truck remains for several months and who was not in a position to notify Lear of Sterling's possible third-party claims, not knowing the identity of the switch manufacturer. Finally, instructing the jury that a negative inference might be drawn against Sterling based on its failure to preserve the burned-out vehicle would not only misstate the facts (given the 1-2 month window in which Lear might have inspected the vehicle), but, again, serve to prejudice the plaintiff, who should not be swept under the pall of such an instruction.

Conclusion

For the reasons set forth herein, Lear's motion for sanctions (Docket No. 48) is **DENIED**.

So Ordered.

Dated July 19, 2004

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

TNT ROAD COMPANY et al v. STERLING TRUCK
CORPORATION

Assigned to: MAG. JUDGE MARGARET J.
KRAVCHUK

Referred to:

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 28:1332 Diversity-Property Damage

Date Filed: 03/17/03

Jury Demand: Both

Nature of Suit: 385 Prop. Damage

Prod. Liability

Jurisdiction: Diversity

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